



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUN 17 2003

RETURN RECEIPT REQUESTED

Robert J. Huston, Chairman
Texas Commission on Environmental Quality
MC 100
P.O. Box 13087
Austin, Texas 78711-3087
(Certified Mail # 7003 0500 0003 8792 8110)

Re: Investigation of Permitting and Public Participation Practices of the Texas Commission on Environmental Quality (and its Predecessor Agencies) as Raised in Title VI Administrative Complaints: EPA File No. 2R 94 R6, No. 3R-94-R6, No. 5R-94 R6, No. 2R-95-R6, No. 1R-96-R6 and No. 1R-00-R6

Dear Chairman Huston:

Since 1994, a number of complaints have been filed with EPA's Office of Civil Rights alleging various violations of Title VI of the Civil Rights Act of 1964 as amended, 42 U.S.C. §§ 2000d *et seq.*, and EPA's regulations at 40 C.F.R. Part 7 by the Texas Commission on Environmental Quality's predecessor agencies the Texas Natural Resource Conservation Commission, the Texas Air Control Board and the Texas Water Commission – in the administration of its environmental permitting and public participation program. Several of these complaints raised common issues or concerns, such as a failure or refusal to take into account the "cumulative" or "additive" impact on a surrounding community of emissions from the facility being permitted in conjunction with emissions from other facilities, and others raised a variety of issues regarding the adequacy of the public notice, education or outreach efforts to meaningfully inform potentially affected residents of proposed actions, or of the permitting process to address concerns raised by members of the public. In light of the range of common issues raised by the various complaints regarding TCEQ's program, OCR's investigation focused both on the individual matters complained of, as well as a more general review of TCEQ's public participation program and practices

This letter and the accompanying Final Investigation Report constitute OCR's finding under Title VI and 40 C.F.R. Part 7, and its dismissal of these Title VI complaints. OCR's findings, and the legal and factual bases for the findings, on each of the allegations are set forth in detail in the Investigation Report, which is incorporated herein by reference.



Recycled/Recyclable
Printed on paper that contains
at least 75% recycled fiber

Legal Background for Complaints. Title VI prohibits discrimination on the basis of race, color, or national origin under programs or activities receiving federal financial assistance. EPA has adopted regulations to implement Title VI. 40 C.F.R. Part 7. EPA's regulations prohibit intentional discrimination and discriminatory effects that occur in the administration of programs or activities receiving EPA funds. Facially neutral policies or practices that result in discriminatory effects violate EPA's Title VI regulations, unless the recipient can provide justification and there are no less discriminatory alternatives. TCEQ (and its predecessor agencies) is a recipient of EPA financial assistance and is therefore subject to the requirements of Title VI and EPA's implementing regulations.

The Title VI Complaints. The consolidated investigation covered nine separate allegations raised in six individual complaints: No. 2R-94-R6 ((b) (7)(C)), No. 3R-94-R6 (Garden Valley Neighborhood Association), No. 5R-94-R6 ((b) (7)(C)), No. 2R-95-R6 ((b) (7)(C)), No. 1R-96-R6 (People Organized in Defense of Earth and Her Resources), and No. 1R-00-R6 ((b) (7)(C)). By topic, the allegations raised concerned a failure of the permitting process to take *cumulative impacts* into account in permitting ((b) (7)(C), Garden Valley, ((b) (7)(C) and PODER); a failure to conduct *public education and outreach* or to *inform the public of hazards* or otherwise assist and enable meaningful participation in the permitting process ((b) (7)(C)); a *denial of public process* (PODER, ((b) (7)(C)); a *denial of access to public information* for use by public in permitting (PODER); and a *failure to use evidence of violations* provided by the public in enforcement. ((b) (7)(C)).

The Title VI Investigation. The investigation covered both the specific allegations made in the complaints, as well as a more general review of TCEQ's permitting and public participation processes. The factual basis for each of the individual allegations was investigated, and the more general review focused on the changes and modifications to TCEQ's permitting and public participation processes since 1994 (when the first of the complaints was accepted for investigation). In particular, the investigation looked for changes that had the effect of increasing, enhancing or otherwise assisting citizens and neighborhood groups to participate in the regulatory and permitting process; that enable TCEQ to better consider and respond to citizens' concerns; and that give greater attention to the environmental and human health conditions in affected communities. In addition to a wide-ranging research and review of laws, rules and regulations, and TCEQ policies governing permitting and public participation activities, and an analysis of position statements and other evidence related to the specific complaints, EPA conducted numerous interviews of members of the public who have participated in or experience with TCEQ programs, TCEQ staff and management, as well as EPA Region VI staff and management familiar with TCEQ's conduct of public meetings on permits.

Overall Findings. Because the investigation covered a large number of complaints and allegations, and included a general review of TCEQ's permitting and public participation program, there are a number of specific findings. In addition, findings in some of the individual

complaints covered by this investigation are affected by the outcome of prior investigations of other (non-public participation) allegations raised in these complaints. For example, the evidence did not support the claim in the Garden Valley Neighborhood Association complaint that residents there were subjected to adverse health impacts in the permitting of a particular facility,¹ indicating that the separate allegation covered by this investigation that TCEQ's failure to take "cumulative impacts" into account in facility permitting likewise did not result in adverse health impacts. Where relevant, the results of other investigations are discussed in the accompanying Investigation Report.

The Investigation concluded that many of the individual allegations have since been addressed, in whole or in part, by changes and enhancements to TCEQ's program that were adopted and implemented subsequent to the time that the complaints were filed. Thus, even if the allegations were true at the time, corrective measures have since been taken by TCEQ to address the matter that gave rise to the allegation. The available evidence in some other cases did not tend to support a finding of a violation of Title VI (as noted above with respect to the Garden Valley complaint), although subsequently-implemented changes to the program would have addressed the concern, either in whole or in part. In addition, TCEQ has entered into an agreement by which it has committed to undertake a number of actions in the future that are relevant to several of the allegations covered by this Investigation. However, the Investigation also indicated that even though TCEQ has formally modified substantial parts of its permitting and public participation program, the delivery of the program "in the field" is at times uneven and may require attention in the future to ensure its effectiveness. TCEQ will be taking steps to address this concern, as part of the written agreement.

Findings in Specific Cases:

(b) (7)(C) (No. 2R-94-R6): With respect to the allegation concerning the failure of TCEQ's predecessor agencies to take into account during the permitting process the additional risks and pollutant burdens from the construction of a proposed AEI incinerator in Houston, at the time of the permitting (1993), TCEQ's air permitting program considered only the impacts of the individual facility on the surrounding area, but did not expressly require or allow consideration of the effect of facility emissions in conjunction with those from other facilities. The facility has never been built, and the 10-year permit has not been renewed. As a result, there have been no actual health impacts (no emissions) as a result of the permitting action that underlay the complaint. The evidence therefore does not clearly support a finding of a violation in this case. Further, express legal authority for TCEQ to take cumulative impacts into account was provided by the Texas legislature in 2001, addressing the programmatic deficiency complained of, and TCEQ has further committed to enter into an agreement to work jointly with EPA Region VI in this area.

¹ See U.S. EPA Office of Civil Rights, Investigative Report for Title VI Complaint File No. 3R-94-R6 (Dec. 9, 2002).

GVNA (No. 3R-94-R6): With respect to the allegation concerning the failure of TCEQ's predecessor agencies to take into account during the permitting process additional risks and pollutant burdens from the TXI sand, gravel and cement bagging facility located near Austin, at the time of the permitting (1994), TCEQ's air permitting program considered only the impacts of the individual facility on the surrounding area, but did not expressly require or allow consideration of the effect of facility emissions in conjunction with those from other facilities. A related investigation completed in December 2002 indicated that there were no cumulative impacts above any identified level of concern from the facility's operations. The evidence therefore does not clearly support a finding of a violation in this case. Further, express legal authority for TCEQ to take cumulative impacts into account was provided by the Texas legislature in 2001, addressing the programmatic deficiency complained of, and TCEQ has further committed to enter into an agreement to work jointly with EPA Region VI in this area.

(b) (7)(C) (No. 5R-94-R6): With respect to the allegation that TCEQ's predecessor agencies failed to include or rely on evidence of violations provided by residents living nearby the former Gibraltar facility located near Winona in any of the enforcement actions that were brought against the facility by TCEQ, at the time of the complaint (1995), TCEQ did not have express authority to rely on citizen-generated evidence in enforcement actions, and therefore did not cite or otherwise use evidence of violations that had been supplied by local citizens in any of the various enforcement actions it took while the facility was in operation (the facility closed in 1997). TCEQ's practice at this time was to send its own inspectors to gather evidence, conduct formal inspections and record reviews, etc., in order to gather evidence of violations. A related investigation of TCEQ enforcement response to compliance problems at the Gibraltar facility, completed in December 2002, indicated no violation (lack of disparity), but resulted in a Letter of Concerns and recommendations. Further, even though the evidence does not clearly support a finding of a violation (lack of disparity), express legal authority has since been provided by the Texas legislature (in 2001) for TCEQ to use and rely on evidence of violations provided by citizens in an enforcement action, remedying the programmatic deficiency complained of.

(b) (7)(C) (No. 2R-95-R6): With respect to the allegation that TCEQ's predecessor agencies failed to consider the cumulative effect of permitting facilities in the Corpus Christi area, at the time the complaint was filed (1996), TCEQ's air permitting program did not expressly require or allow consideration of the effect of facility emissions in conjunction with those from other facilities. Nevertheless, the evidence in this case indicates that ambient conditions were considered at the time of the permitting actions complained of (despite the lack of clear legal authority to do so), as the result of public concerns about cumulative impacts. Since that time, express legal authority for TCEQ to take cumulative impacts into account was provided by the Texas legislature in 2001, addressing the programmatic deficiency complained of, and TCEQ has further committed to enter into an agreement to work jointly with EPA Region VI in this area.

With respect to the allegation that TCEQ did not inform the public of environmental concerns in the area, or to assist them in participating in the permitting process, the evidence indicated that TCEQ's then-recently-established Environmental Equity Program, as well as other

parts of TCEQ, provided outreach, pollutant monitoring, and public involvement specifically focused on the Corpus Christi area in response to public concerns. TCEQ did not, however, provide all the services the complaint alleged that TCEQ should have (such as relocating residents to other areas), but there is no evidence that TCEQ is authorized to provide such services. In addition, services provided by the Environmental Equity Program, as well as those provided by the Office of Public Assistance in the permitting process and other Public Interest Counsel to represent citizen concerns in permitting, have expanded since the time that the complaint was filed in 1996. However, because the general review indicated some unevenness in the delivery of services in the field, by agreement TCEQ has committed to conduct a multi-year review and assessment of these services, to identify and implement needed program upgrades.

A third allegation, of a failure to enforce/ensure compliant operations in this area, is the subject of a separate investigation.

PODER (No. 1R-96-R6): With respect to the allegations that TCEQ's predecessor agencies (1) denied residents living near the Tokyo Electron facility outside Austin the opportunity for meaningful public participation by withholding public information from the permitting record, as a result of TCEQ's practice of approving contested permits prior to the resolution of appeals to the Attorney General for information withheld as confidential, (2) denied the opportunity for a full public permitting process and was alleged to result in cumulative impacts through the use of "standard exemptions" (a system of exemptions for de minimis facility emissions), and (3) use of "standard exemptions" results in cumulative impacts, the results of the investigation indicated the following:

Denial of Information: The evidence indicated that no public information was withheld. Following completion of the appeal under the Texas Open Records law (the State's Freedom of Information Act equivalent), the information sought was determined to be a confidential trade secret and not public information. TCEQ subsequently changed its permitting procedures to suspend the permit process (*i.e.*, not further process or issue a permit) until an appeal for information under the Texas Open Records law is completed. The evidence also showed that permit was never approved, and the application was withdrawn by the facility.

Denial of Process: Following withdrawal of the permit application, the facility operated under a "standard exemption," which is an exemption from the permitting and notice requirements for facilities that emit de minimis levels of emissions, and there is no evidence that the facility did not qualify for the exemption (*i.e.*, no process to which residents were entitled was denied). Since the time that the complaint was filed (1996), the system of "standard exemptions" has been replaced by a new permitting system ("permits-by-rule"), with notice provisions and reduced procedural requirements (rather than a complete exemption from notice and permitting) that did not exist under the prior system, and lower emission levels to qualify for the streamlined permitting process. In addition, the facility in question has since been permitted using full public notice and comment procedures. Also relevant to this allegation is the agreement provision for TCEQ to review and evaluate the adequacy of public notice and impacts from TCEQ permitted facilities, specifically to include permits-by-rule.

Cumulative Impacts from "Standard Exemptions": De minimis emission levels for standard exemption were set at levels below regulatory thresholds of concern, and are unlikely to result in an impact, alone or in combination with emissions from other sources. As noted above, the system complained of has since been replaced, and also relevant is the new express authority for TCEQ to take cumulative impacts into account, as well as the formal commitment by TCEQ to work with EPA Region VI in this area.

(b) (7)(C) (No.1R-00-R6): With respect to the complaint that the opportunity for a contested case hearing for a permit modification at the Exxon-Mobil facility in Beaumont was denied on the basis that TCEQ "chose" not to require the facility to go through the "normal" public notice and comment procedures applicable to permits, the evidence demonstrated the following: Only a single notice and public meeting of the proposed permit amendment was provided for the permit modification, and no second notice was provided. Under applicable Texas law, however, only a single notice and public meeting is provided for in connection with permit modifications which do not result in an increase in emissions. In this case, the increase in emissions from the unit being permitted (an upgrade in equipment) was offset by emission reductions elsewhere at the facility, resulting in no net increase in overall facility emissions. A second notice was not given because, under these circumstances, no second notice is allowed under Texas law (*i.e.*, TCEQ did not "choose" to avoid "normal" notice-and-comment procedures, but followed mandated procedural requirements).

A second, related allegation – that the permit modification resulted in an increase in emissions impacting the nearby community – is being handled through a separate process (currently in alternative dispute resolution). However, the outcome of this "substantive" allegation affects the "procedural" allegation of whether there was a denial of process. Specifically, *if* the emission reductions were validly credited as part of the permitting and no net increase (or a decrease) in emissions resulted from the permit amendment, the right to a contested case hearing would not have been denied because no hearing at all is provided for under Texas law. Alternatively, *if* there was an emissions increase as a result of the permit amendment, there may have been an improper denial of process. Consequently, the "procedural" allegation in this case (the denial of notice and opportunity to contest the permit amendment) turns wholly on the outcome of the "substantive" question.

Therefore, the allegation of a denial of process is resolved consistent with the outcome achieved by the ADR process concerning the "substantive" issue, or if no mutually agreeable resolution is achieved through ADR, this matter is to be resolved consistent with the final determination of EPA's investigation of whether the emissions reductions were valid.

Conclusion. As a result of the investigation of the allegations in this matter, and based upon review of the materials submitted and information gathered, and in consideration of the terms of the voluntary agreement for future action by TCEQ, as well as controlling legal authority, EPA has not found a violation of Title VI or EPA's implementing regulations. Accordingly, EPA is dismissing the complaints (as stated in Section VII of the accompanying

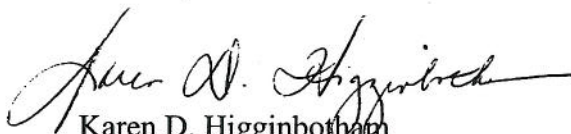
Investigation Report) as of the date of this letter, and conditioned upon the completion and implementation of the commitments that TCEQ has agreed in writing to undertake.

Title VI provides all persons the right to file complaints against recipients of federal financial assistance. No one may intimidate, threaten, coerce, or engage in other discriminatory conduct against any individual or group because of action taken or participation in any action to secure rights protected under Title VI. 40 C.F.R. §7.100.

Under the Freedom of Information Act, 5 U.S.C. § 552, EPA may be required to release this document, the Final Investigation Report, and related correspondence, documents, and records, upon request. In the event of such a request, EPA will seek to protect, to the extent provided by law, any personal information, which, if released, could constitute an unwarranted invasion of the privacy of any individual.

In closing, I would like to thank and acknowledge the assistance of the representatives of the citizens groups and others who were part of the investigation, complainants, and the staff of TCEQ's Office of Public Assistance for being cooperative and helpful during this investigation. If you have any questions or would like to discuss these recommendations further, please feel free to contact John Fogarty of EPA's Title VI Task Force at 202-564-8865.

Sincerely,



Karen D. Higginbotham
Director
Office of Civil Rights

Enclosures

cc: Steve Pressman, Associate General Counsel (Acting)
Office of General Counsel (2399A)

Phyllis P. Harris, Principal Deputy Assistant Administrator
Office of Enforcement and Compliance Assurance (2201A)

Barry Hill, Director
Office of Environmental Justice (2201A)

Lawrence Starfield, Deputy Regional Administrator
EPA Region 6 (6RA)

Yasmin Yorker, Chair
Title VI Task Force (2201A)

Jodena Henneke, Director
Office of Public Assistance, TCEQ (MC 108)

(b) (7)(C) President

(b) (7)(C)

(b) (7)(C)

Sahs & Associates

(b) (7)(C) President

Garden Valley Neighborhood Association

(b) (7)(C)

(b) (7)(C) Esq.

Hankins Law Firm

(b) (7)(C) Executive Director

People Organized in Defense of Earth and her Resources

(b) (7)(C) Executive Director

(b) (7)(C)

(b) (7)(C)

Clean Air Program Chapter
Sierra Club Lone Star Chapter

(b) (7)(C)

Environmental Justice Director
Sierra Club Lone Star Chapter

AGREEMENT
between the
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
and the
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

PURPOSE AND JURISDICTION

1. This Agreement is entered into by the Texas Commission on Environmental Quality (TCEQ, formerly the Texas Natural Resource Conservation Commission, and renamed effective September 1, 2003) and the United States Environmental Protection Agency Office of Civil Rights. This Agreement resolves certain issues raised in complaints (noted below in Paragraph 5) filed with U.S. EPA alleging violations of Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d to 2000d-7, and U.S. EPA's implementing regulations at 40 C.F.R. Part 7.
2. Title VI of the Civil Rights Act of 1964 prohibits agencies and other entities that receive Federal financial assistance from conducting their programs or activities in a manner that discriminates on the basis of race, color, or national origin. The TCEQ is a recipient of Federal financial assistance from the U.S. EPA and is subject to the provisions of Title VI and U.S. EPA regulations at 40 C.F.R. Part 7.
3. The TCEQ is committed to carrying out its responsibilities in a nondiscriminatory manner, in accordance with the requirements of Title VI and U.S. EPA regulations at 40 C.F.R. Part 7. The activities detailed in Paragraph 8 of this Agreement, which TCEQ has voluntarily agreed to undertake and implement, are in furtherance of this commitment. The Executive Director and Director of the Office of Public Assistance, in their capacity as officials of TCEQ, have the authority to enter into this agreement for purposes of carrying out the activities listed in the following paragraphs.
4. This Agreement is entered into pursuant to the authority granted the U.S. EPA, under Title VI and U.S. EPA regulations at 40 C.F.R. Part 7, to investigate administrative complaints alleging discrimination in the provision of services by recipients of Federal financial assistance from U.S. EPA, and to seek to resolve such complaints using voluntary, nonadversarial means. As provided in Paragraphs 9 and 10, this Agreement does not constitute an admission by TCEQ nor a finding by U.S. EPA of any violation(s) of Title VI or 40 C.F.R. Part 7.

BACKGROUND

5. Since 1994, a number of complaints have been filed with U.S. EPA alleging violations of Title VI of the Civil Rights Act of 1964 and U.S. EPA's implementing regulations at 40 C.F.R. Part 7 by TCEQ and its predecessor agencies in the administration of its permitting and public participation program

- File No. 2R-94-R6 (filed by (b) (7)(C)), No. 3R-94-R6 (filed by the Garden Valley Neighborhood Association), No. 2R-95-R6 (filed by (b) (7)(C)), and No. 1R-96-R6 (filed by People Organized in Defense of Earth and Her Resources, et al), alleging discrimination from the failure of TCEQ and its predecessor agencies to take multiple sources and/or pollutants into account in permitting
- File No. 2R-95-R6 (filed by (b) (7)(C)) alleging discrimination from the failure by TCEQ and its predecessor agencies to conduct public outreach, inform the public of hazards, or otherwise enable communities to meaningfully participate in the permitting process;
- File No. 1R-96-R6 (filed by People Organized in Defense of Earth and Her Resources, et al) and No. 1R-00-R6 (filed by (b) (7)(C)), alleging discrimination by TCEQ and its predecessor agencies by denying communities affected by a permitting action of the opportunity to raise concerns during the permitting process (through the use of "standard exemptions" or denying the opportunity for a hearing);
- File No. 1R-96-R6 (filed by People Organized in Defense of Earth and Her Resources, et al), alleging discrimination by TCEQ and its predecessor agencies by failing to provide for meaningful public participation as the result of approving contested permits while an appeal for public information is pending; and
- File No. 5R-94-R6 (filed by (b) (7)(C)), alleging discrimination by TCEQ and its predecessor agencies by not responding to or using citizen-generated evidence of violations in enforcement.

6. Numerous changes, modifications and amendments to the laws, regulations and policies governing TCEQ's permitting and public participation program have been implemented since 1994 that are intended to or have the effect of enhancing the effectiveness of TCEQ's permitting and public participation program, including (but not limited to) measures that increase the availability of public information and provide for public outreach, that encourage public participation in the permitting process, and that identify and respond to community concerns. In addition, legislation passed by the Texas Legislature has required or authorized numerous other changes, modifications and amendments, including (but not limited to) measures that likewise have the purpose or effect of enhancing TCEQ's permitting and public participation program, and which provide new authority for TCEQ to take into account the impacts or risks on communities from multiple sources or multiple pollutants, and to respond to community-identified noncompliance by facilities. Several of these new authorities and programs have already been implemented, are currently being implemented, or will be implemented in the future. Several of these changes have addressed or will address, at least in part, issues identified in Paragraph 5.

7. In response to the Title VI complaints accepted for investigation between 1994 and 2001 and listed in Paragraph 5, the U.S. EPA has undertaken an investigation of the TCEQ's compliance with Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d to 2000d-7, and U.S. EPA's implementing regulations at 40 C.F.R. Part 7. This Agreement between EPA and TCEQ has been entered into prior to any finding of violation from that investigation, and addresses allegations of discrimination resulting from cumulative impacts, public outreach and participation practices, citizen collected evidence, and impacts from the use of permitting procedures that deny notice and an opportunity to raise concerns in permitting.¹

SPECIFIC COMMITMENTS

8. The TCEQ agrees to undertake the following specific commitments:

A. Not later than 270 days from the effective date of this Agreement, TCEQ agrees to enter into a Memorandum of Agreement with the U.S. EPA, Region VI, to collaborate and jointly share information relating to the further study and consideration of cumulative impacts in areas including but not limited to permitting activities, rules, and policies of both agencies. The EPA and TCEQ agree to coordinate, where appropriate, on research and data collecting activities relating to the study of cumulative risks.

B. Within 3 years of the effective date of this Agreement, TCEQ agrees to undertake an assessment of TCEQ's public participation program in permitting, to include but not be limited to:

(i) its outreach and public education/awareness activities (including the methods of notifying the public of permitting activities, and of the citizen and community assistance resources provided by or through TCEQ);

(ii) specific measures or activities undertaken to provide for public awareness and notice of, and impacts from, TCEQ permitted or authorized activities by permitted entities (including, but not limited to, use of permits-by-rule);

(iii) an evaluation of TCEQ's response to concerns raised in comments by members of the public during facility permitting; and

(iv) to identify and take appropriate steps to implement potential revisions, as necessary, to address issues or aspects of TCEQ's program for which a change or modification is appropriate.

¹ This Agreement does not address other allegations raised in complaints Nos. 3R-94-R6 and 1R-00-R6 (failure to enforce), and Nos. 5R-94-R6 and 2R-95-R6 (adverse health impacts from facility emissions), which are investigated separately.

C. Within 1 year of the effective date of the agreement, TCEQ agrees to initiate an assessment and evaluation of the protectiveness of air quality permit-by-rules that require registration, including any necessary revisions and modifications.

D. Not later than 180 days from the effective date of this Agreement, TCEQ agrees to initiate a process to assess the citizen collected evidence program implemented by TCEQ in January, 2002, including tracking complaints received in conjunction with citizen collected evidence, whether the evidence was collected according to the TCEQ protocols, and the number of enforcement actions initiated as a result of citizen collected evidence; and to notify EPA describing the implementation of this process.

E. TCEQ agrees to provide a copy of the completed assessment, evaluation and/or report (as applicable) described in Paragraphs 8.B, 8.C and 8.D, by certified mail to the Director, U.S. EPA Office of Civil Rights (Mail Code 1201A), 1200 Pennsylvania Avenue N.W., Washington D.C. 20460, within 30 days of the completion by TCEQ of each.

EFFECT OF AGREEMENT

9. It is understood that this Agreement does not constitute an admission by TCEQ or a finding by the U.S. Environmental Protection Agency of violations of 40 C.F.R. Part 7 regarding the permitting and public participation matters raised in File No. 2R-94-R6, No. 3R-94-R6, No. 5R-94-R6, No. 2R-95-R6, No. 1R-96-R6 and No. 1R-00-R6 described in Paragraph 5.

10. In consideration of TCEQ's implementation of, and adherence to, the provisions of this Agreement described in Paragraph 8, the U.S. EPA Office of Civil Rights will not continue any further proceedings with respect to the permitting and public participation matters referred to in Paragraph 5.

A. If the Office of Civil Rights determines that TCEQ has not satisfied a term or condition of this Agreement, or that a material change to TCEQ's programs or authorities affects TCEQ's compliance with Title VI and 40 C.F.R. Part 7, the Office of Civil Rights shall promptly notify TCEQ of that determination in writing.

B. The notification under Paragraph 10.A shall include a statement of the facts and circumstances upon which the Office of Civil Rights has relied in making its determination, and the Office of Civil Rights shall provide an opportunity to resolve any disputed issue(s) by informal means.

C. With respect to any assessment, evaluation and/or report (as applicable) described in Paragraphs 8.B, 8.C or 8.D that has been submitted by TCEQ pursuant to Paragraph 8.E, if the Office of Civil Rights determines that the submission does not satisfy the requirements of Paragraph 8.B, 8.C or 8.D (as applicable), EPA shall provide the written notification required by Paragraphs 10.A and 10.B within 90 days of EPA's receipt of the submission. If notification under Paragraph 10.A is not provided by

On behalf of the Texas Commission on Environmental Quality,

Margaret Hoffman
Margaret Hoffman,
Executive Director

30 May 2003
Date

Jodena Herneke
Jodena Herneke,
Director, Office of Public Assistance

30 May 2003
Date

On behalf of the U.S. Environmental Protection Agency,

Karen D. Higginbotham
Karen Higginbotham, Director
Office of Civil Rights

12 June 2003
Date



True copy

Page 6 of 6

Francis P. Bonds
FRANCIS P. BONDS
NOTARY PUBLIC, DISTRICT OF COLUMBIA
My Commission Expires: 31 August 2006